

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>Digital Output Protection Technology and Recording Method Certifications</b>	)	<b>MB Docket No. 04-62</b>
	)	
<b>Content Protection Recordable Media for Video Content</b>	)	

**RESPONSE TO THE APPLICATION OF 4C ENTITY LLC FOR INTERIM  
AUTHORIZATION OF CONTENT PROTECTION RECORDABLE MEDIA FOR  
VIDEO CONTENT BY THE MOTION PICTURE ASSOCIATION OF AMERICA, INC.,  
METRO-GOLDWYN-MAYER STUDIOS INC., PARAMOUNT PICTURES  
CORPORATION, SONY PICTURES ENTERTAINMENT INC., TWENTIETH  
CENTURY FOX FILM CORPORATION, UNIVERSAL CITY STUDIOS LLLP, THE  
WALT DISNEY COMPANY, AND WARNER BROS. ENTERTAINMENT INC.**

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April 6, 2004

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The Motion Picture Association of America, Inc., Metro-Goldwyn-Mayer Studios Inc., Paramount Pictures Corporation, Sony Pictures Entertainment Inc., Twentieth Century Fox Film Corporation, Universal City Studios LLLP, The Walt Disney Company, and Warner Bros. Entertainment Inc. (collectively the “MPAA Parties”) hereby file this response to the application of the 4C Entity, LLC (“4C”) to be an Authorized Recording Method on an interim basis for Marked and Unscreened Content (the “Application”). The MPAA Parties express support for the Application upon the expectation that 4C will respond to and/or clarify the issues raised below in its reply filing.

We note at the outset that this proceeding, and the Commission’s review of the content protection technologies, related functionalities, and licenses submitted in this proceeding, are concerned only with whether the proposal meets the interim requirements the Commission

identified for the protection of digital broadcast television content. This response, therefore, is based on the understanding that if the Commission decides to authorize CPRM-Video on an interim basis for use in protecting Marked and Unscreened Content, that authorization extends only to the use of CPRM-Video in the Broadcast Flag application.<sup>1</sup> In addition, we have reserved comment on the bulk of licensing terms, trusting that the marketplace negotiations of the agreements will produce acceptable business terms.

CPRM-Video is an example of the value of the marketplace criteria advocated repeatedly by the MPAA and others in the Broadcast Flag proceeding.<sup>2</sup> As the MPAA has explained elsewhere, any content protection technology must limit redistribution to the device's "local environment" (i.e., the set of compliant, authorized devices within a tightly defined geographic area around a Covered Product) through the use of reasonable and affirmative constraints. CPRM-Video places reasonable and affirmative constraints on the scope of redistribution of Marked and Unscreened Content because it cryptographically binds the content to the recordable media<sup>3</sup> and then authorizes only protected digital outputs during playback that provide effective

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<sup>1</sup> For example, the interim authorization of a content protection technology would not determine in any way whether that technology appropriately protects content with copy restrictions delivered through high-definition analog outputs, which was not the subject of the Broadcast Flag proceeding.

<sup>2</sup> As the 5C companies, the MPAA, and other content providers stated in comments filed earlier in the Broadcast Flag proceeding, the Commission should adopt standards and procedures that implement "a flexible, market-based approach under which a technology is authorized for Table A if it has been accepted in the relevant marketplace as a protection technology or it is just as effective as one that has." Joint Comments of the MPAA *et. al.*, MB Docket No. 02-230, at 22 (filed Dec. 6, 2002); *see also* Comments of the Digital Transmission Licensing Administrator LLC ("5C"), MB Docket No. 02-230, at 10 (filed Dec. 6, 2002).

<sup>3</sup> Without prejudice to the legal rights of content owners, the Broadcast Flag system does not constrain the movement of removable physical recordings of Marked or Unscreened Content. That is due both to the limits of technology and, most importantly, to the tedium, cost, delay, "one-to-one" nature, and related practical factors that severely limit the occasions and impact of physical transfer. The extraordinary ease, immediacy, extensibility, and both direct and aggregate "one-to-many" breadth of digital *re-transmission* is another matter entirely, as clear and distinct as the difference between mailing a VHS or other copy of a movie to a friend and *broadcasting* the same movie to an audience or group through open or closed circuit. As indicated above, the proposed secure recording technology and accompanying license include reasonable and effective restrictions on such retransmission from the recordings.

redistribution control. In addition, CPRM is expressly named in the DTCP license for use in protecting “New Release Content,” as that term is defined in the Joint Proposal for authorization as a digital output protection technology. Therefore, under the Joint Proposal that the MPAA and others submitted to the Commission, if DTCP is approved on an interim basis as an Authorized Digital Output Protection Technology, then CPRM-Video would be approved.

The MPAA Parties request that 4C respond to and/or clarify the following issues in its reply filing in a satisfactory manner to facilitate approval of CPRM technology by the Commission in this proceeding.

**I. 4C Should Clarify That CPRM-Video Imposes No Obligations on Content Providers, Broadcasters, Consumers, or Others**

The CPRM-Video technology could become one of many technologies included in the Broadcast Flag system. All approved technologies will receive broadcast content marked with the Broadcast Flag and may be invoked or “triggered” in response to the Broadcast Flag in various devices, such as set top boxes and digital video recorders. Content providers, broadcasters, and others currently cannot direct which approved technologies may receive broadcast content marked with the Broadcast Flag or which approved technologies may get triggered by the Broadcast Flag. Because content providers, broadcasters, and others exercise no direct control over the actual use of CPRM (or any of the other potential Broadcast Flag technologies), 4C should clarify that broadcasters, content providers, and others who do not take a license to the CPRM technology but who mark or broadcast content with a Broadcast Flag that triggers the CPRM-Video technology are not subject to any obligations to 4C or the 4C Founders, including but not limited to intellectual property licensing obligations. Furthermore, 4C should certify, as a condition of interim authorization, that no consumer transmitting or

receiving content marked with the Broadcast Flag signal will incur any claim of obligation from 4C or the 4C Founders.

## **II. The Obligation to Detect and Respond to CGMS-A and Macrovision on 4C Licensed Recorders for the CPRM Technology Should Be Restored**

4C has removed from its Adopter license agreements the obligation of detection and response to CGMS-A and Macrovision on the recording of analog video signals by CPRM-equipped recording products sold in a jurisdiction where this detection has not yet been mandated by law or regulation. Although 4C indicates that the MPAA member companies supported 4C CPRM-Video as an approved recording method for Broadcast Flag content in the Broadcast Protection Discussion Group (BPDG) proceedings and in MPAA FCC filings, these statements were made when the 4C companies' CPRM-Video Compliance Rules included CGMS-A and Macrovision detection and response obligations, or when the 4C Founders had assured the MPAA and its member companies that such obligations would be part of the 4C CPRM license agreement. As the 4C companies are well aware, content owners rely on secure digital recording technologies incorporating the obligation of detecting CGMS-A and Macrovision analog copy protection signaling during digital recording of analog video. This is important since the playback of these protected digital recordings always produce analog video signals. Therefore, to create a complete framework of content protection, it is critical that these protected digital recording technologies also contain the obligation of detecting analog copy protection signaling when attempting to record analog video signals.

## **III. The Terms of the 4C CPRM License Agreement Must Apply to the 4C Founders**

An owner of a technology or a member of a technology consortium may have the ability under the consortium's rules to use the technology in its own products free of obligations or

without taking a license. Alternatively, the member may control sufficient intellectual property to license decryption in downstream products independent of the consortium. Or a member may manufacture its own devices and not license the technology. 4C should clarify that for any use of the CPRM-Video technology, the 4C Founders are obligated to comply with the compliance and robustness rules of the 4C CPRM license agreement equivalently to any other Adopter licensee of the 4C CPRM technology.

#### **IV. Clarify Technical Issues in License**

Although in these comments we have refrained from identifying license and language issues better left to marketplace negotiations, we have set forth a few ancillary license issues, which are expected to be readily and easily addressed by 4C as mere technical corrections.

These ancillary issues include:

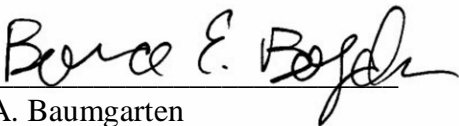
- a. Section 1.2 of Exhibit 4 of the 4C CPRM license should be clarified to ensure that “defeating” functions may not be applied to uncompressed video so as, for example, to permit the stripping of CCI indicating EPN in such content.
- b. The CPRM license should define Expiration Information with respect to CPRM-Video (as well as CPRM-Audio).
- c. Expand all change management, enforcement and expiration rights (including without limitation third party beneficiary rights, change management participation, examination and inspection rights and expiration rights) currently applicable to any audio content providers to content providers that execute a 4C Digital Video Content Participant Agreement.
- d. In order to effectuate revocation, it is necessary that a standardized means for delivering revocation lists in the ATSC transport stream is developed and that FCC approval of any protected digital output and secure recording technology include obligations that Covered Demodulator Products and downstream devices properly receive, preserve, process, and convey downstream as appropriate, such information. In its reply, 4C should explain how it will deal with this issue.

**V. Conclusion**

We look forward to 4C's satisfactory responses on these issues, and to the Commission's ultimate authorization of CPRM-Video on an interim basis for use in protecting digital broadcast content under the Broadcast Flag regulation.

Respectfully submitted,

THE MOTION PICTURE ASSOCIATION OF AMERICA, INC.  
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